IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1164 OF 2005

Ashok Ghisulal Jain & anr. ..Petitioners.

Vs.

Smt. Kamalabai Dattatray Kale ..Respondent.

....

Mr. M.S. Bhandari with Smt. Suman Jain for the Petitioners.

CORAM : DR.D.Y.CHANDRACHUD, J.

29th August, 2005.

P.C.:

The impugned order of the Additional District Judge, Pune was passed on 15th June, 2004. By the order, the interlocutory order of injunction passed by the Trial Court came to be vacated. The prima facie finding of the Appellate Court is that though the Petitioners herein had a right to draw water from the common well, there was no right to utilize the land of the Respondent for doing so and that both the properties have a separate access as was found by the Court Commissioner. This Petition was filed in January 2005 over six months after the order of injunction was vacated. The Petition has not been circulated until it has been placed on Board today. Having

regard to the fact that the findings contained in the impugned order are purely prima facie findings at the interlocutory stage, I am of the view that the interference of this Court under Article 227 would not be warranted. However, having regard to the facts and circumstances of the case, the trial of the suit is expedited. In the event that an application is made by the Petitioners before the Trial Court for an early hearing of the suit, the Trial Court is requested to consider such a request and to set down a time schedule for early disposal preferably within a period of six months from the date on which the Learned Trial Judge is moved. The Petition is accordingly rejected.

It is clarified that all the observations contained in the impugned order of the Appellate Court are confined to the disposal of the application for interim relief which shall not come in the way of the trial of the suit on merits.